CONFERENCE ON DISARMAMENT

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SOUTH AFRICA

Interpretation of the Rules of Procedure
of the Conference on Disarmament

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1. Your request, dated 11/1/1999, for legal advice on the Rules of Procedure of the Conference of Disarmament and the Decision on the Improved and Effective Functioning of the Conference on Disarmament, refers.

2. The Law Advisers were requested to advise on the correct interpretation of para. 5 (d) on the Conference on Disarmament's "Decision on the Improved and Effective Functioning of the Conference on Disarmament" (CD/1036 dated 21 August 1990), which reads as follows:

> 5. On the question of time-limits for the establishment of subsidiary bodies and their mandates: (d) that in the case of an absence of consensus on the establishment of any particular subsidiary body or its mandate, the incumbent President shall in the subsequent two weeks try to identify a Special Coordinator to assist in carrying out informal consultations with a view to reaching consensus.

3. In this regard we comment as follows:

3.1 Rules of Interpretation

According to the rules of interpretation, the intention of the drafters is paramount in interpreting a text. In general it can be accepted that the wording of a text will reflect the intentions of the drafters. Should the wording of a text not contain a clear indication as to the intention of the drafters or be ambiguous or lead to a result which is obscure or unreasonable, the interpreters may resort to the *travaux preparatoires* or preparatory work as a tool of interpretation. We are of the opinion that the wording of the text under discussion is sufficiently clear in itself and that there is no need to have to consider any preparatory material.

3.2 The functions and duties of the President of the Conference on Disarmament in the context of paragraph 5(d)

Para. 5 (d) clearly provides that decisions on the establishment of a subsidiary body should be taken by way of consensus. This paragraph essentially indicates how the President of the Conference on Disarmament must

act in cases where there is no consensus on the establishment of such a body in order to reach consensus. In such cases the President does not have a discretion whether or not to appoint a Special Coordinator. The President is (after the first two weeks of the annual session when the principal debate on the establishment of subsidiary bodies and their mandates is to take place, in accordance with para. 5(c) of the Conference on Disarmament Decision CD/1036) obliged to (shall) try to identify such a person within two weeks to assist in the process of reaching consensus.

3.3 The meaning of the phrase 'try to identify'

The phrase 'try to identify' as it is used in para. (d) is accepted as having its normal meaning: The President of the Conference on Disarmament is, in the situation envisaged by para. 5(d), obliged to (shall) take all reasonable steps to identify a person to fulfil the Special Coordinator task. This must be done in the two-week period following the first two weeks of the annual session (when the principal debate on the establishment of subsidiary bodies and their mandates is to take place). Where no person is available or willing and able to assist the President in reaching consensus, the President alone is responsible to conduct consultations with a view to reaching consensus, without the assistance of the Special Coordinator. If the President can identify a person, the President would appoint that person to fulfil the task outlined in para. 5(d).

3.4 Is consensus required in the Conference on Disarmament for the appointment of a Special Coordinator?

As stated above, para. 5(d)provides for situations where a consensus does not exist on the establishment of a subsidiary body or its mandate. Para. 5(d) does not in any part of its text indicate that a consensus in the Conference on Disarmament would be required for the appointment of a Special Coordinator in terms of its provisions.

The appointment of the said Special Coordinator is done by way of unilateral action of the President. The text of para. 5(d) does not stipulate or imply in any way that the President has to clear his decision to appoint a Special Coordinator with anybody, nor does he have to seek consensus on such appointment. It is reasonable to accept that if consensus in this regard was intended by the drafters, the text would have contained a clear indication in this regard. This conclusion is endorsed by the fact that any decision on the establishment of a subsidiary body must, even after a Special Coordinator is appointed, be taken by way of consensus. Any interpretation to the contrary would be in clear conflict with the text.

A suggestion that consensus on the appointment is required would have the potential of creating a situation whereby a member of the Conference on Disarmament who had prevented a consensus on the original proposal for the establishment of any particular subsidiary body or its mandate would be in a position to again prevent a consensus on the appointment of the Special Coordinator. Thereby the clear intention of the drafters, who were establishing a mechanism to assist in reaching a consensus and not a mechanism to continue the original disagreement, would be frustrated.

3.5 Duration of the appointment of a Special Coordinator

Para. 5(d) provides no indication of any artificial restriction or limitation on the duration of the term of office of a Special Coordinator appointed in terms of its provisions. The duration of the term of office of a Special Coordinator appointed in terms of par 5(d) would be determined by the eventual outcome of the informal consultations which are to be conducted by the Special Coordinator.

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